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8 SVB FINANCIAL GROUP,  
9 Plaintiff,

10 v.  
11 FEDERAL DEPOSIT INSURANCE  
12 CORPORATION, AS RECEIVER FOR  
13 SILICON VALLEY BANK, et al.,  
14 Defendants.

Case No. 24-cv-01321-BLF (VKD)

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28 **ORDER RE AUGUST 23, 2024  
DISCOVERY DISPUTE RE  
PLAINTIFF'S PRIVILEGE REVIEW**

Re: Dkt. No. 68

The parties ask the Court to resolve a dispute regarding plaintiff SVB Financial Group's ("SVBFG") refusal to allow defendants Federal Deposit Insurance Corporation, as receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A. (together, "FDIC-R"), to review documents in FDIC-R's possession that SVBFG believes may contain attorney-client privilege communications where the privilege is held exclusively by SVBFG. Dkt. No. 68. The Court held a hearing on the matter on September 17, 2024. Dkt. No. 72.

During the hearing, SVBFG represented to the Court that, of the 24 million documents originally at issue, it has no objection to FDIC-R reviewing approximately 23.7 million of those documents.<sup>1</sup> However, SVBFG further advised that it is still reviewing for privilege approximately 300,000 documents and objected to FDIC-R accessing those documents before the privilege review is complete. SVBFG has not prepared a privilege log or other document identifying specific privilege assertions. Emphasizing the pressing deadline for completion of

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<sup>1</sup> These figures do not include an unknown number of Teams chat messages.

1 party document discovery on January 31, 2025, FDIC-R argued that it should be permitted  
2 immediate access to the remaining approximately 300,000 documents, subject to SVBFG's ability  
3 to claw back documents it later identifies as privileged.

4 For the reasons explained during the hearing, the Court cannot resolve the parties' dispute  
5 on the record presented, and further proceedings are required. The Court orders as follows:

6 1. By **September 20, 2024**, SVBFG must identify for FDIC-R: (1) the documents (by ID  
7 number) that FDIC-R may review without objection from SVBFG; (2) the documents (by ID  
8 number) that SVBFG is still reviewing for privilege; and (3) the custodians whose documents  
9 SVBFG is still reviewing for privilege. If SVBFG requires "linking" information from FDIC-R to  
10 process and review Teams chat messages, SVBFG must identify the information it requires with  
11 specificity.

12 2. By **September 20, 2024**, FDIC-R must provide SVBFG with an informal, topical  
13 description of the claims and anticipated defenses that it presently expects will define the scope of  
14 discovery in this action. In addition, FDIC-R must identify for SVBFG proposed search terms for  
15 application to the approximately 300,000 documents SVBFG is still reviewing for privilege. If  
16 FDIC-R wishes to have SVBFG prioritize the review of documents from certain custodians, it  
17 shall so inform SVBFG.

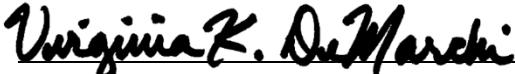
18 3. SVBFG must promptly investigate the search terms proposed by FDIC-R, as well as  
19 any requests for prioritization, and must promptly inform FDIC-R of the efficacy of the proposed  
20 search terms. Thereafter, the parties shall confer regarding a plan for SVBFG's efficient  
21 completion of its privilege review of the remaining approximately 300,000 documents, including  
22 prioritization of documents from certain custodians, and its privilege review of the Teams chat  
23 messages.

24 4. By **October 1, 2024**, the parties must file a joint report identifying the number of  
25 documents SVBFG is still reviewing for privilege and the parties' agreed or respective proposals  
26 for the application of search terms or other methodologies to expedite SVBFG's privilege review  
27 of the documents (including Teams chat messages) most likely to be relevant to a claim or  
28 anticipated defense. The proposal(s) shall also include proposed dates for: (1) release of

1 documents (including Teams chat messages) for FDIC-R review; and (2) service of a privilege log  
2 or logs documenting SVBFG's assertion of privilege, if any.

3 **IT IS SO ORDERED.**

4 Dated: September 17, 2024

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7 Virginia K. DeMarchi  
8 United States Magistrate Judge